

**FIXED PRICE SUBCONTRACT
NO. XXX**



The Regents of the University of California
Lawrence Berkeley National Laboratory
One Cyclotron Road
Berkeley, CA 94720

Subcontractor:

[Name]
Attention: _____
[Address]
[City, State, Zip]
Phone: _____ Fax: _____
E-Mail: _____

University Procurement Representative:

Name: Brian Cusick
Title: Principal Subcontract Administrator
Phone: (510) 486-5451
E-Mail: bvcusick@lbl.gov

Introduction

This is a fixed price subcontract (hereinafter "Subcontract") for Non Recurring Engineering (NRE) as related to the National Energy Research Scientific Computing Center (NERSC) Computer System NERSC 9 Subcontract XXXXX and as further described herein.

This Subcontract is between The Regents of the University of California, (hereinafter "University") and the party identified above as the "Subcontractor".

This Subcontract is issued under Prime Contract No. DE-AC02-05CH11231 between the University and the United States Government (hereinafter "Government"), represented by the Department of Energy (hereinafter "DOE") for the management and operation of the Lawrence Berkeley National Laboratory (hereinafter "LBNL") and the performance of research and related work.

Agreement

The parties agree to perform their respective obligations in accordance with the terms, conditions, and provisions of the attached SCHEDULE OF ARTICLES and the documents referenced or incorporated therein, which together with this Signature Page shall collectively constitute the entire Subcontract and shall supersede all prior negotiations, representations, or agreements, whether verbal or written.

[SUBCONTRACTOR'S NAME]

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

SCHEDULE OF ARTICLES

ARTICLE 1 –ORDERED SERVICES

- A. Description. The Subcontractor shall provide and perform the following services (hereinafter "Services"), in accordance with this Subcontract:

NRE work as it relates to NERSC 9.

The Services are more fully described in the incorporated Statement of Work.

The schedule for performance of the Services shall be as approved by the University Technical Representative.

Subcontractor shall furnish all personnel, supervision, materials, supplies, equipment, tools, facilities, transportation, testing, and other incidental items and services necessary for performance of the Services, except for any Government Property specified herein to be furnished by the University. The Subcontractor shall deliver the materials, products, supplies, and reports, as specified herein.

- B. Location. The Services shall be performed by the Subcontractor at the Subcontractor's facilities, at the LBNL, and at other locations approved by the University.
- C. Off-Site Requirements. For Services performed at non-LBNL locations, other than the Subcontractor's or lower-tier subcontractor's facilities, the Subcontractor shall be solely responsible for identifying and complying with all environmental protection, safety, health, and security requirements applicable to those locations, including all related laws, regulations, codes, standards, and any site-owner/manager requirements. The Subcontractor shall advise the University Technical Representative of all such site-owner/manager requirements.
- D. Acceptance. Acceptance of the Services under this Subcontract shall be based on the Subcontractor's performance and completion of the Services in consonance with high professional standards and compliance with the delivery and reporting requirements specified herein.

ARTICLE 2 – PERIOD OF PERFORMANCE

The period of performance of this Subcontract shall commence as of the date of signature of this Subcontract by both parties and shall end on XXX.

Milestone Number and Description	Completion Date
01 - XXXXX XXXXX	XX/ XXXX
02 - XXXXX XXXXX	XX/ XXXX
03 - XXXXX XXXXX	XX/ XXXX
04 - XXXXX XXXXX	XX/ XXXX

ARTICLE 3 – PRICE AND PAYMENT

A. Fixed Price

The Subcontractor shall perform this Subcontract for the total fixed price of \$___TBD_____. The fixed price for each milestone shall be as follows:

Milestone Number	Fixed Price
01	\$XXX,XXX
02	\$XXX,XXX
03	\$XXX,XXX
04	\$XXX,XXX
Total	\$XXX,XXX

B. Cost Sharing Provisions

Cost sharing is a condition for Class Advance Waiver W(C) XXXXXXXX on intellectual property for a domestic large business Subcontractor. Subcontractor has asserted its intent to participate in the cost sharing arrangement by absorbing at least 40 percent of the costs for the NRE as follows:

LBNL Fixed Share	Subcontractor Cost Share	Total Estimated NRE Costs
\$XXX,XXX	\$XXX,XXX	\$XXX,XXX

In the event the Subcontractor does not share in the research costs at a minimum level of 40 percent, the Class A Advance Waiver W(C) XXXXXXXX will not be available and the existing FAR and DEAR intellectual property clauses as provided in the GENERAL PROVISIONS (incorporated by reference in Article 16) will apply.

All contributions, including cash and third party in-kind contributions, shall be accepted as part of the recipient’s cost sharing or matching when such contributions meet all of the following criteria:

1. Are verifiable from the recipient’s records (General Provisions clause DEAR 970.5232-3 applies).
2. Are not included as contributions for any other federal project or program.
3. Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
4. Are allowable under the applicable cost principles in Federal Acquisition Regulation (FAR) Subpart 31.2, as supplemented by DOE Acquisition Regulation (DEAR) Subpart 931.2.
5. Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

6. Are provided for in the approved budget when required by the University.

Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the University. When an employer other than the Subcontractor furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

- C. Sales or Use Tax. Items purchased by the University hereunder are treated as for resale, per the University's California State Resale Permit No. SR-CH 21-835970 for LBNL, and shall not be subject to any California or other State sales or use tax if shipped to California. Any items furnished hereunder for rentals or leases are subject to California State sales or use tax, and such tax is included in the fixed prices/rates stated herein.

The University of California State Resale Permit No. SR-CH 21-835970 for LBNL is available at: <http://procurement.lbl.gov/supplier-forms/>.

- D. Invoices

1. Invoice(s) shall be submitted by email directly to the LBNL Accounts Payable Office at APInvoice@lbl.gov, upon completion of each Milestone. The "subject" line of the email shall state the Subcontractor's name and the Subcontract number.

2. If unable to submit its invoices by email, the Subcontractor may submit its invoices to the following address:

Lawrence Berkeley National Laboratory
Accounts Payable Office, Subcontract No. XXX
One Cyclotron Road, M/S 971-AP
Berkeley, CA 94720

3. Invoice(s) shall state the Subcontract number; clearly identify the Subcontractor (including business heading or logo); include an invoice date, unique invoice number, and remittance address; sufficiently identify the items/services being invoiced; and identify any separately payable freight charges (with receipts if available) and taxes. Invoice(s) in a spreadsheet format are not acceptable, but a spreadsheet can be used to support an invoice. The Subcontractor shall maintain records which support all invoiced amounts, and provide them to the University Procurement Representative upon request.

4. LBNL will verify completion of each milestone. Subcontractor shall provide the University documentation satisfactory to the University to verify milestone completion. Title to deliverable items or deliverable portions thereof shall vest in the Government immediately upon the date of the milestone payment.

- E. Payment Terms. All invoices except the final invoice shall be payable within 30 days of receipt, or 15 days if the Subcontractor is a small business; provided, however, that payments made

thereafter shall not be subject to any penalty, interest, or late charges. Only those items/services identified in this Subcontract or a Subcontract Modification will be considered for payment. Payment amounts may be adjusted for any applicable credits, offsets, or withholds. Full payment shall not be due until any final acceptance requirements of this Subcontract have been satisfied. Questions regarding invoices should be directed to the Vendor Help Desk at (510) 486-6954 or vendordesk@lbl.gov.

F. Allocated Funding Limit

1. The funding presently allocated for payment to the Subcontractor under this Subcontract is limited to \$XXX,XXX. The allocated funding amount is expected to cover completion of Milestone(s) XXX.
2. It is anticipated that the University will increase this allocated funding amount up to the total fixed price of this Subcontract as funding becomes available, excluding unexercised options; however, the University shall not be obligated to do so. The allocated funding amount may be unilaterally changed by the University Procurement Representative, by issuance of a written modification to this Subcontract.
3. The allocated funding amount specified above shall be the limit of the University's liability for payment for milestones funded under this Subcontract, any other provision to the contrary notwithstanding. The Subcontractor is not obligated to perform work on unfunded milestones under this Subcontract or otherwise incur cost or expenses in excess of the allocated funding amount. The Subcontractor shall notify the University in writing at least five working days prior to stopping the Services to avoid exceeding the allocated funding amount.

G. Travel Requirements.

1. **All foreign travel is subject to the requirements of DOE Order 551.1D, *Official Foreign Travel*, and must be approved in advance, even if the travel is included in the Subcontractor's cost proposal or indirectly charged.** The Subcontractor shall submit the following information to the University Technical Representative at least 45 days prior to the departure date.
 - a. Destination (country, business location and lodging location).
 - b. Trip departure and return dates for each business location (city and country). Subcontractors are required to disclose any planned vacation or personal time to be done in conjunction with official business.
 - c. Business purpose(s). Describe the activities that will be conducted for each business location (response limited to between 230 and 1500 characters).
 - d. Trip description and benefit. Describe how the trip will benefit the University/DOE and what the Subcontractor expects to accomplish (response limited to between 230 and 2000 characters).
 - e. Host and accommodation information. Provide the in-country host name, telephone number, and institution for each business location (country). Also provide the hotel name and local telephone number (i.e., no 800-numbers) for each business location.

- f. Conference information. If applicable, provide the conference name and acronym along with conference's website URL and conference role (participant, presenter, chair, etc.).
 - g. Flight information. Provide a copy of airline travel itinerary or proposed flight itinerary.
2. Foreign travel is travel (whether wholly or partly on official business) from the United States (including Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories and possessions of the United States) to a foreign country (including Canada and Mexico) and return; and travel between foreign countries by persons, including foreign nationals.
 3. The pre-approval requirement applies to foreign travel for the project regardless if it is considered DOE or Subcontractor shares of the total project costs.

ARTICLE 4 – SUBCONTRACT ADMINISTRATION

- A. Notices, Requests, and Modifications. The Subcontractor shall submit all notices and requests for approval by email to the University Procurement Representative indicated on the signature page or at the following mail address:

Lawrence Berkeley National Laboratory
Attn: Brian Cusick
One Cyclotron Road M/S 59R4010A
Berkeley, CA 94720

Only the University Procurement Representative is authorized to modify the terms, conditions, and requirements of this Subcontract, including any changes to the description of the Services, and to issue any notices and approvals required by this Subcontract.

- B. University Technical Representative. XXXXX XXXXX is the University Technical Representative for this Subcontract. This individual is designated to monitor performance of the Services and to interpret and clarify the technical requirements, but is not authorized to make changes to the Services or to modify any of the terms and conditions of this Subcontract, including those related to the completion schedule or pricing.

The University Technical Representatives are not authorized to issue any technical direction which would (1) constitute an assignment of work outside the general scope of the work covered by this Subcontract; (2) change the description of the work to be performed or any applicable drawings, designs, and specifications; (3) change the time or place of performance; the method of shipment or packaging, or the place of inspection, delivery or acceptance; (4) increase the estimated cost for performance of the work or the time required for performance of the work; (5) change any expressed term or condition of the Subcontract; or (6) unreasonably interfere with the Subcontractor's ability to perform and complete the work. Any such change must first be authorized by a written modification to this Subcontract issued by the University Procurement Representative.

The Technical Representatives will coordinate the flow of technical information between the Subcontractor and personnel at the DOE Office of Science, Advanced Scientific Computing

Research (ASCR) Program; and DOE's National Nuclear Security Administration's (NNSA) Advanced Simulation and Computing (ASC) Program; the Alliance for Computing at Extreme Scale (ACES) at Los Alamos National Laboratory (LANL) and Sandia National Laboratory (SNL) and LBNL.

- C. Closeout. The Subcontractor shall, as a condition of full payment, assist the University after the completion of the Services in accomplishing the administrative closeout of this Subcontract, including, as necessary or required, the furnishing of documentation and reports, the disposition of property, the disclosure of any inventions, the execution of any required documents, the performance of any audits, and the settlement of any interim or disallowed costs.

ARTICLE 5 – FURNISHED AND ACQUIRED PROPERTY

- A. University Furnished Property. The University will furnish the following U.S. Government Property for use as required under this Subcontract:

NONE

- B. Subcontractor Acquired Property. The Subcontractor is authorized to acquire, fabricate, or provide the tangible personal property items identified in the Subcontractor's proposal for use under this Subcontract, including the items listed below. The Subcontractor shall not acquire other tangible personal property for use under this Subcontract without the University Procurement Representative's advanced written approval.

NONE

The Subcontractor shall notify the University Procurement Representative upon receipt of Subcontractor Acquired Property (SAP) listed above and upon receipt of future authorized SAP acquisitions. These notifications shall include a detailed description of each item to include the manufacturer, model & serial numbers, the quantity, the acquisition cost (including transportation and other related costs such as installation), dates of acquisition and receipt, and the specific location of the equipment (building and room numbers).

- C. Disposition. All University Furnished Property and Subcontractor Acquired Property listed above shall be identified, utilized, accounted for, and protected in accordance with the *Government Property* clause of the General Provisions. Disposition of such property shall be as directed by the University Procurement Representative or a University Property Representative. For such property, the Subcontractor shall submit, upon request, a completed *Final Property Certification* form, as incorporated herein or provided, confirming the property disposition.

ARTICLE 6 – SHIPPING REQUIREMENTS

- A. Shipping Terms. The shipping terms are FOB Destination, freight included/prepaid. All shipments shall be shipped via the Subcontractor's vehicles or a licensed common carrier selected by the Subcontractor, at the Subcontractor's expense.

- B. Delivery Address. All shipments shall be delivered to the following address:

Lawrence Berkeley National Laboratory
National Energy Research Scientific Computing Center
For the U.S. Department of Energy

ARTICLE 7 – REPORTS

A. Type of Reports

1. Monthly Progress Reports. Monthly progress reports shall be submitted by the tenth business day of each month. The progress reports may be informal letter summaries in a format approved by the University representatives. These reports shall contain a description of the NRE performed during the report period and the NRE planned for the succeeding period.

Monthly Conference Calls. A conference call will be held approximately monthly to discuss the Monthly Progress Report, to coordinate activities between the Subcontractor and the Laboratories, refine the research agenda, and identify and resolve any issues regarding work to be performed.

2. Quarterly Progress Reports and Face-to-Face Meetings. The Quarterly Progress Report should include descriptions of the research concepts including any refinements arising from the research; preliminary evaluations of the research concepts across all technical areas; plans for detailed evaluations of the concepts; and a financial summary.

Quarterly Face-to-Face Meetings will be held to review current project status and refine requirements. These meetings will consist of informal presentations and interactive discussions to exchange information and gain consensus on project direction. These meetings may be held at a Laboratory or a Subcontractor location or at a location mutually agreed upon.

3. Executive Communication. Subcontractor’s Executives shall be advised of all major activities and decisions in regards to the NRE Project. Subcontractor’s Executives will meet periodically with LBNL personnel to discuss high-level issues and plans. These meetings may occur upon request and may be via teleconference, at the Subcontractor’s or LBNL facilities, or at mutual points of travel convergence. Further, Subcontractor’s Executives will participate in Quarterly Face-to-Face Meetings.

4. Final Report. A final report shall be submitted upon completion of the NRE tasks and contain a comprehensive summary of all NRE results and conclusions. The form and content of the final report shall be acceptable to the University Technical Representative. If so requested, a draft copy of the Report shall be provided to the University Technical Representative for review prior to final submittal. The final report shall contain a financial report in sufficient detail to allow the University to verify the Subcontract’s cost share requirements have been met.

- B. Submittal. Written reports shall be submitted to the following recipients at the following email or mailing address:

<u>Recipient</u>	<u>Mail Stop</u>	<u>Email</u>
Name		_____@lbl.gov
Name		_____@lbl.gov
Name		_____@lbl.gov

ARTICLE 8 –KEY PERSONNEL

It is understood and agreed that the Subcontractor's key personnel designated below are considered to be essential to the Services being performed hereunder and shall not be reassigned or replaced without prior University approval, except where such circumstances are beyond the reasonable control of the Subcontractor. The Subcontractor shall notify the University Procurement Representative reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the performance of this Subcontract.

NAME

XXXXX XXXXX

TITLE

XXXXX

The Subcontractor shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her and shall devote only qualified personnel to work under this Subcontract. Should the University deem anyone employed on the work incompetent or unfit for his or her duties and so inform the Subcontractor, the Subcontractor shall remove such person from work under this Subcontract.

ARTICLE 9 – LBNL SITE ACCESS REQUIREMENTS

- A. All Subcontractor and lower-tier subcontractor employees requiring access to any LBNL controlled facility or site are subject to DOE access restrictions. Any questions should be directed to either the subcontract designated Technical Representative or Procurement Representative.
- B. The Subcontractor shall not assign foreign national (non-U.S. citizen) employees or other personnel to work at any LBNL controlled facility or site who were born in, are citizens of, are employed or sponsored by or represent a government, company, institution, or other organization based in a country on the Department of State's List of State Sponsors of Terrorism without prior written approval from DOE Headquarters. Terrorist-sponsoring countries include Iran, Sudan and Syria. Requests for access must be submitted to LBNL Site Access Office at least 180 days in advance to allow time for approval from the DOE.
- C. The University is also required by DOE to document all foreign national employees who were born in, are citizens of, are employed or sponsored by or represent a government, company, institution or organization based in, a sensitive country and who require access to an LBNL controlled facility or site. To obtain site access, the Subcontractor must provide LBNL's Site Access Office the place of birth and citizenship for all foreign national employees/personnel working on this subcontract who may access an LBNL controlled facility or site. Employees/personnel from specific sensitive countries may need additional processing and/or be subject to specific restrictions as required by DOE Order 142.3A.

ARTICLE 10 – ACCESS TO LBNL COMPUTER AND NETWORK RESOURCES

- A. Access to LBNL computer and network resources by Subcontractor personnel shall be in accordance with, and is subject to, the LBNL security policies and procedures, including, but not limited, to the policies found at <http://go.lbl.gov/itpolicy>. These policies and procedures are applicable, whether such access is at LBNL, at the Subcontractor's facility, or elsewhere. If the Subcontractor does not comply with these requirements, the University may withdraw Subcontractor's access to LBNL resources. Misuse of LBNL resources may be a violation of law

and could result in appropriate action, including termination for default and/or criminal prosecution.

- B. Access to LBNL resources by Subcontractor personnel is only permitted as required to perform the Services authorized under this Subcontract. All information or data furnished by the University, obtained from a LBNL computer, or developed on a LBNL resource by Subcontractor personnel must be protected by the Subcontractor to prevent disclosure to any person other than those authorized by the University. Files which are not designated for access by Subcontractor personnel may not be accessed without specific permission from the University. The University reserves the right to monitor the use of LBNL computer resources by all appropriate means.
- C. Computer and network passwords issued to Subcontractor personnel for access to the LBNL resources must not be shared and must be protected by Subcontractor personnel to prevent disclosure to any other persons. If a password is disclosed, or disclosure is suspected, the Subcontractor must immediately notify the University Technical Representative and arrange for replacement of the password.

ARTICLE 11 – APPROVAL OF TECHNICAL DATA

If this Subcontract requires the Subcontractor to furnish any drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance or test data, or other technical data (hereinafter called “data”) for the University’s approval, University’s approval of the data shall not relieve the Subcontractor from responsibility for any errors or omissions in such data or from responsibility for complying with the requirements of this Subcontract, except as specified below. Any work done prior to such approval shall be at the Subcontractor’s risk.

If the data includes any variation from the Subcontract requirements, the Subcontractor shall describe such variation in writing at the time of submission of the data to the University, for University’s review and approval. If University approves any such variation, the variation will be incorporated into the Subcontract by a bilateral Modification to this Subcontract.

Unless otherwise specified, University requires a period of 10 working days, from date of receipt, to review and approve the data. If University does not approve the data within the allotted time period, the parties will establish a new time period for review and approval of the data and, if necessary, the delivery schedule or completion date will be equitably adjusted.

All submittals shall be sent to the following e-mail addresses to the maximum extent practical.

xxx@.xxx.xxx

All submittals that cannot be sent electronically shall be sent to the following address.

Lawrence Berkeley National Laboratory
Attention: TBD
One Cyclotron Road
Berkeley, CA 94720

ARTICLE 12 – ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

In the performance of this Subcontract, the Subcontractor shall specify, furnish, and use environmentally preferable products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Subcontract requirements and the intended end use of the products or services. Information on environmentally preferable products and services is available at: <http://www.epa.gov/opptintr/epp/>.

ARTICLE 13 - E-VERIFY PROGRAM ENROLLMENT

Pursuant to the *Employment Eligibility Verification* clause of the General Provisions (FAR 52.222-54), the Subcontractor shall:

Enroll as a Federal contractor in the online E-Verify System at: <https://e-verify.uscis.gov/enroll>, and within 10 days of award of this Subcontract provide the University Procurement Representative with written verification of the enrollment, such as a copy of the Subcontractor's "Company Information" page from the E-Verify System.

ARTICLE 14 – SYSTEM FOR AWARD MANAGEMENT (SAM)

By acceptance of this Subcontract, the Subcontractor certifies that it is registered in the SAM database within 30 days of contract award per FAR 52.204-7, *System for Award Management* clause of the General Provisions and acknowledges the requirement heretofore to maintain said registration in the database in accordance with the *System for Award Management Maintenance* clause (FAR 52.204-13) of the General Provisions. The Subcontractor is responsible for the accuracy and completeness of its data within the SAM database in accordance with the stated requirements. In any event, failure to complete the registration within the required timeframe is considered a breach of contract.

ARTICLE 15 – U.S. NATIONAL LABORATORIES AND AGENCIES

The Subcontractor recognizes that work performed under this Subcontract is of interest not only to LBNL, but to other U.S. national laboratories and agencies as well. The Subcontractor agrees that LBNL may share and otherwise distribute deliverables, information, data, software, and any correspondence provided by the Subcontractor under this Subcontract with personnel at the U.S. national laboratories and agencies identified below.

- Argonne National Laboratory (ANL), managed and operated by UChicago Argonne LLC
- Los Alamos National Laboratory (LANL), managed and operated by Los Alamos National Security LLC (LANS)
- Lawrence Berkeley National Laboratory (LBNL), managed and operated by the University of California
- Sandia National Laboratory (SNL), managed and operated by Sandia Corporation
- Oak Ridge National Laboratory (ORNL), managed and operated by UT-Battelle LLC
- Lawrence Livermore National Laboratory (LLNL), managed and operated by Lawrence Livermore National Security LLC (LLNS)
- U.S. Department of Energy, National Nuclear Security Administration (NNSA)
- U.S. Department of Energy, Office of Science (DOE SC)

This Article 15 does not in any way limit or restrict LBNL's or the Government's rights set forth in GENERAL PROVISIONS.

ARTICLE 16 – INCORPORATED DOCUMENTS

The following documents are hereby incorporated as a part of this Subcontract. The documents marked with an asterisk are available at: <http://procurement.lbl.gov/welcome-to-procurement-property/become-a-supplier/general-provisions/>, and <http://procurement.lbl.gov/supplier-forms/>.

- General Provisions for Fixed Price Non-Commercial Supplies & Services, dated 9/12/16*
- Title of the Statement of Work____, dated _____
- XXX Small Business Subcontracting Plan, dated _____
- N9 Final Cost Sharing Report Template

ARTICLE 17 – GENERAL PROVISIONS

- A. The clauses listed in the referenced General Provisions shall be applicable to this Subcontract, based on the value of the Subcontract, the status of the Subcontractor, or the nature and location of the Services, as indicated in the General Provisions.
- B. This Subcontract is for research, development, or demonstration work or design work involving non-standard types of construction. Accordingly, the clauses listed in the General Provisions related to such work shall apply.
- C. The following clauses are hereby added to the *Clauses Incorporated by Reference* clause of the General Provisions, under the "Applicable to all Subcontracts" section:

FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT
MESSAGING WHILE DRIVING (AUG 2011)
FAR 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

- D. Since the Subcontractor shares in the total NRE project costs at a minimum level of 40 percent, the clause DEAR 952.227-13 Patent Rights--Acquisition By The Government is replaced with the following modified clause 10 CFR 784.12 Patent Rights—Waiver (JUL 1996) as modified by Class Waiver W(C)2016-002:

(a) Definitions.

As used in this clause:

- (1) "Background patent" means a domestic patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by the Contractor at any time through the completion of this contract:
- (i) Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

- (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
- (2) "Contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.
- (3) "DOE patent waiver regulations" means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (4) "Invention" as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- (5) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (6) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (7) "Patent Counsel" means the Department of Energy Patent Counsel assisting the procuring activity.
- (8) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (9) "Secretary" means the Secretary of Energy.
- (10) "Small business firm" means a small business concern as defined at Section 2 of the Pub. L. 85-536 (15 U.S.C. 532) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- (11) "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) Allocation of principal rights.

Whereas DOE has granted a waiver of rights to subject inventions to the Contractor, the Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent applications by Contractor.

- (1) The Contractor shall disclose each subject invention to the Patent Counsel within six months after conception or first actual reduction to practice, whichever occurs first in the course of or under this contract, but in any event, prior to any sale, public use, or public disclosure of such invention known to the Contractor. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the inventors and the contract under which the invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the Contractor shall promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
- (2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title; provided, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period. The Contractor shall notify the Patent Counsel as to those countries (including the United States) in which the Contractor will retain title not later than 60 days prior to the end of the statutory period.
- (3) The Contractor shall file its initial patent application on an elected invention within 1 year after election, but not later than at least 60 days prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where foreign filing has been prohibited by a Secrecy Order.
- (4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing may, at the discretion of DOE, be granted, and will normally be granted unless the Patent

Counsel has reason to believe that a particular extension would prejudice the Government's interest.

(d) Conditions when the Government may obtain title notwithstanding an existing waiver.

The Contractor shall convey to DOE, upon written request, title to any subject invention--

- (1) If the Contractor elects not to retain title to a subject invention;
- (2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause (provided that DOE may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);
- (3) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of DOE, the Contractor shall continue to retain title in that country;
- (4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention; or
- (5) If the waiver authorizing the use of this clause is terminated as provided in paragraph (p) of this clause.

(e) Minimum rights to Contractor when the Government retains title.

- (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title under paragraph (d) of this clause except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
- (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- (3) Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Contractor action to protect the Government's interest.

- (1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:
 - (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and
 - (ii) convey title to DOE when requested under paragraph (d) and subparagraph (n)(2) of this clause, and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) The Contractor shall notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by DOE. The Government has certain rights in this invention."
- (5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the course of or under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual

reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Patent Counsel a description of such procedures for evaluation and for determination as to their effectiveness.

- (6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government; to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government; and to provide for such refund in any instrument transferring rights in the invention to any party.
- (7) The Contractor shall furnish the Patent Counsel the following:
 - (i) Interim reports every 12 months (or such longer period as may be specified by the Patent Counsel) from the date of the contract, listing subject inventions during that period and certifying that all subject inventions have been disclosed or that there are no such inventions.
 - (ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.
- (8) The Contractor shall promptly notify the Patent Counsel in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Patent Counsel, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.
- (9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in subparagraph (g)(1) or (2) below, the Contractor-
 - (i) shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter, and
 - (ii) shall not proceed with such subcontracting without the written authorization of the Contracting Officer.
- (10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.
- (11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) Subcontracts.

- (1) Unless otherwise directed by the Contracting Officer, the Contractor shall include the clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. For subcontracts with domestic entities that do not qualify as a small business firm or nonprofit organization, regardless of tier, for experimental, developmental, demonstration, or research work, the Contractor shall insert this clause (suitably modified to identify the parties). For foreign subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Contractor shall include the patent rights clause at 48 CFR 952.227-13 (suitably modified to identify the parties).
- (2) The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (3) In the case of subcontractors at any tier, the Department, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Department with respect to those matters covered by this clause.

(h) Reporting on utilization of subject inventions.

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor and any of its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by DOE in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) Preference for United States industry.

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights.

The Contractor agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 48 CFR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that--

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Background Patents.

(1) The Contractor agrees:

- (i) to grant to the Government a royalty-free, nonexclusive license under any Background Patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.
- (ii) that, upon written application by DOE, it will grant to responsible parties for purposes of practicing a subject of this contract, nonexclusive licenses under any Background Patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive or partially exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(2) Notwithstanding paragraph (k)(1)(ii), the Contractor shall not be obligated to license any Background Patent if the Contractor demonstrates to the satisfaction of the Secretary or his designee that:

- (i) a competitive alternative to the subject matter covered by said Background Patent is commercially available from one or more other sources; or

- (ii) the Contractor or its licensees are supplying the subject matter covered by said Background Patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) Communications.

All reports and notifications required by this clause shall be submitted to the Patent Counsel unless otherwise instructed.

(m) Other inventions.

Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention, except with respect to Background Patents, above.

(n) Examination of records relating to inventions.

- (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

- (i) Any such inventions are subject inventions;
- (ii) The Contractor has established and maintains the procedures required by paragraphs (f)(2) and (f)(3) of this clause; and
- (iii) The Contractor and its inventors have complied with the procedures.

- (2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by paragraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with paragraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

- (3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

- (4) Any examination of records under this paragraph shall be conducted in such a manner as to protect the confidentiality of the information involved.

(o) Withholding of payment.

NOTE: This paragraph does not apply to subcontracts or grants.

- (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--
 - (i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) of this clause;
 - (ii) Disclose any subject invention pursuant to subparagraph (c)(1) above;
 - (iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) above; or
 - (iv) Provide the information regarding subcontracts pursuant to subparagraph (f)(8) of this clause.
 - (v) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.
- (2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
- (3) Final payment under this contract shall not be made before the Contractor delivers to the Patent Counsel all disclosures of subject inventions required by paragraph (c)(1) of this clause, an acceptable final report pursuant to paragraph (f)(7)(ii) of this clause, and all past due confirmatory instruments, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.
- (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(p) Waiver Terminations.

Any waiver granted to the Contractor authorizing the use of this clause (including any retention of rights pursuant thereto by the Contractor under paragraph (b) of this clause) may be terminated at the discretion of the Secretary or his designee in whole or in part, if the request for waiver by the Contractor is found to contain false material statements or nondisclosure of material facts, and such were specifically relied upon by DOE in reaching the waiver determination. Prior to any such termination, the Contractor will be given written notice stating the extent of such proposed termination and the reasons therefor, and a period of 30 days, or such longer period as the Secretary or his designee shall determine for good cause shown in writing, to show cause why the waiver of rights should not be so terminated. Any waiver termination shall be subject to the Contractor's minimum license

as provided in paragraph (e) of this clause.

(q) Atomic Energy.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Contractor or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(r) Publication.

It is recognized that during the course of work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, approval for release of publication shall be secured from Patent Counsel prior to any such release or publication. In appropriate circumstances, and after consultation with the Contractor, Patent Counsel may waive the right of prepublication review.

(s) Forfeiture of rights in unreported subject inventions.

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

- (i) Files or causes to be filed a United States or foreign patent application thereon; or
- (ii) Submits the final report required by paragraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in paragraph (m)(1) of this clause, the Contractor:

- (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or
- (ii) Contending that the subject invention is not a subject invention, the Contractor nevertheless discloses the subject invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer, or
- (iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Contracting Officer to be forfeited (such determination

to be a Final Decision under the Disputes clause of this contract), the contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph shall be in addition to and shall not supersede any other rights and remedies which the Government may have with respect to subject inventions.

(t) U.S. Competitiveness

The waiver recipient agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States, unless the waiver recipient can show to the satisfaction of DOE that it is not commercially feasible to do so. The waiver recipient further agrees to make the above condition binding on any assignee or licensee or any entity otherwise acquiring rights to any waived invention, including subsequent assignees or licensees.

E. Paragraphs (c) and (d) of FAR 52.227-14 RIGHTS IN DATA-GENERAL (DEC 2007) of the GENERAL PROVISIONS are deleted in their entirety as written and substituted with the following.

(c) Copyright.

(1) Data first produced in the performance of this contract.

- (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data (Published Data) first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. For the published data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted Published Data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
- (ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number).
- (iii) The Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in Computer Software first produced in the performance of this contract. The Contractor agrees to release original Computer Software developed under this Contract as open source software. For derivative works of Contractor's Restricted Computer Software, the Contractor may commercially license the derivative work. For any derivative works of Computer Software developed under the Contract, the Contractor grants to the Government and others acting in its behalf during the period of Contractor's commercialization of the software, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted Computer Software to

reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government. For original Computer Software, the Government retains a paid-up nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, and distribute copies to the public without restrictions. If required by DOE, the Contractor will provide an Announcement Notice, AN 241.4 Software Announcement Notice, along with providing the source code, the executable object code and the minimum support documentation needed by a competent user to understand and use the Computer Software to DOE's Energy Science and Technology Software Center (ESTSC) via www.osti.gov/estsc.

- (iv) The Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in all Other Data, which is data first produced in the performance of this contract that is neither Computer Software nor Published Data. For such Other Data, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted non-published data to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
 - (v) After the time period set forth below in (d)(3) for Other Data or when he Contractor abandons commercialization of Computer Software, or if, prior to the end of such periods, the contractor has not taken effective steps to commercialize the software, or where it is necessary to alleviate health, safety or energy needs that are not reasonably satisfied by the Contractor, or to meet requirements for public use specified by Federal Regulations and these requirements are not reasonably satisfied by the Contractor, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted software to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
- (2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—
- (i) identifies such data; and
 - (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause, or if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.
- (3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication and use of data.

- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—
 - (i) as prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations);
 - (ii) as expressly set forth in this contract; or
 - (iii) if the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.
- (2) The Contractor shall promptly deliver to the Contracting Officer or to the DOE Patent Counsel designated by the Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the Computer Software to which claim to copyright is made.
- (3) For Other Data that is copyrighted in subparagraph (c)(1)(iv) above, the Government will have the right to provide to third parties such Other Data delivered to the Government in performance of this contract after five years from the date that such data is first produced. The Government shall have the right to provide Other Data to third parties sooner provided that such data (1) are generally known or available from other sources without obligation concerning its confidentiality, (2) have been made available by the owner to others without obligation concerning its confidentiality, or (3) are otherwise already available to the Government without obligation concerning its confidentiality. Interim disclosure or use also may be made for the following purposes:
 - (i) As required for evaluation by *APEX* Program personnel at DOE/NNSA and DOE/NNSA Laboratories;
 - (ii) As required to support the Advanced Scientific Computing Research (ASCR) and Advanced Simulation and Computing (ASC) Program objectives;
 - (iii) As required to respond to a request under the Freedom of Information Act (5 U.S.C. 552), and other applicable laws or regulations, if any;
 - (iv) As required to meet the Government's obligations under international agreements and treaties;
 - (v) As required to commercialize the data if the Contractor has not taken effective steps to do so;

- (vi) As required to alleviate health, safety or energy needs that are not reasonably satisfied by the Contractor; and
- (vii) As required to meet requirements for public use specified by Federal Regulations and these requirements are not reasonably satisfied by the Contractor.

(END OF SCHEDULE OF ARTICLES)

SAMPLE



GENERAL PROVISIONS FOR FIXED PRICE NON-COMMERCIAL SUPPLIES & SERVICES

INDEX

1. DEFINITIONS
2. SCOPE OF SUBCONTRACT
3. ACCEPTANCE OF SUBCONTRACT
4. DOCUMENTS OF SUBCONTRACTOR
5. QUALITY OF SUPPLIES
6. FORCED, CONVICT, AND INDENTURED LABOR
7. PACKAGING INSTRUCTIONS
8. TITLE AND RISK OF LOSS
9. SHIPMENTS FOR UNIVERSITY'S ACCOUNT
10. INVOICES
11. PAYMENT
12. WARRANTY
13. LAWS, REGULATIONS, AND DOE DIRECTIVES
14. NOTIFICATIONS
15. INSPECTION
16. RELEASE OF INFORMATION
17. ASSIGNMENTS
18. BANKRUPTCY
19. EXCUSABLE DELAYS
20. DISPUTES
21. GOVERNING LAW AND VENUE
22. WORK ON UNIVERSITY OR GOVERNMENT PREMISES
23. WORKER SAFETY AND HEALTH
24. INJURY REPORTING
25. WALSH-HEALY PUBLIC CONTRACTS ACT
26. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE
27. CLAUSES INCORPORATED BY REFERENCE

CLAUSE 1 - DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "CFR" means the U.S. Code of Federal Regulations.
• "Items" means the materials, supplies, and services subcontracted for under the Subcontract.
• "DEAR" means the DOE Acquisition Regulation.
• "DOE" means the U. S. Department of Energy.
• "FAR" means the Federal Acquisition Regulation.
• "Government" means the United States Government.
• "LBNL" means the Lawrence Berkeley National Laboratory.
• "Subcontract" means the subcontract between the University and the Subcontractor which includes these
• General Provisions.
• "Subcontractor" means the party who has entered into the Subcontract with the University, as identified in the Subcontract.
• The lower case term "subcontractor" means the Subcontractor's subcontractor(s).
• "University" means The Regents of the University of California, acting through the LBNL.

CLAUSE 2 - SCOPE OF SUBCONTRACT

The scope of the Subcontract shall be limited to the acquisition of fixed price supplies and services, excluding commercial items or commercial components, as those terms are defined in FAR 2.101, and architect-engineer services or construction work. The subcontract may include research, development, or demonstration work.

To the maximum practicable extent, the Subcontractor and its subcontractors at all tiers shall incorporate commercial items or nondevelopmental items, as defined in FAR 2.101, as components of items to be supplied under the Subcontract.

The Subcontract is entered into under the University's Prime Contract No. DE-AC02-05CH11231 with DOE for management and operation of LBNL and performance of research and related work.

CLAUSE 3 - ACCEPTANCE OF SUBCONTRACT

The Subcontractor's written acceptance of this Subcontract or the performance of any portion of this Subcontract shall constitute the Subcontractor's unqualified acceptance of this Subcontract and all of the Subcontract's terms and conditions. Any alterations made to the documents comprising this Subcontract or any conditions imposed by the Subcontractor upon its written acceptance of this Subcontract are not accepted, shall constitute a proposal for modification of the Subcontract only, and shall have no effect on the validity or the Subcontractor's acceptance of this Subcontract and its terms and conditions, anything to the contrary notwithstanding.

In the event the Subcontractor's business status indicated in the Subcontract or the Subcontractor's proposal is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, the University may cancel this Subcontract, without further obligation.

CLAUSE 4 - DOCUMENTS OF SUBCONTRACTOR

The provisions of any quotation or other documents of the Subcontractor referenced in or incorporated as a part of this Subcontract are referenced or incorporated only for the purpose of further describing the Items and the price and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply.

CLAUSE 5 - QUALITY OF MATERIALS AND SUPPLIES

(a) The Items, including any materials and supplies furnished by the Subcontractor in performance of any services, shall as a minimum: (1) conform to the requirements of this Subcontract and be as warranted; (2) be new or reconditioned and so identified and warranted as new and not of such age or so deteriorated as to impair their usefulness or safety; and (3) not contain any counterfeit or suspect materials, parts, or components. The furnishing of reconditioned Items must be specified in the Subcontract or approved by the University.

(b) The University will not accept any Items, including any services involving the furnishing of materials or supplies that do not meet these minimum requirements, notwithstanding any inspection or acceptance of delivery by the University, unless such condition is specifically approved in writing by the University Procurement Representative. The Subcontractor shall promptly replace such items with conforming items at its expense.

(c) The University may impound any suspect/counterfeit items furnished or used under this Subcontract and provide such items to the appropriate authorities for investigation. The University reserves the right to withhold payment for the suspect/counterfeit items pending the results of any such investigation.

(d) A suspect item is any material, part, or component that visual inspection, testing, or other information indicates may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute made without legal right or authority or whose material, performance, or characteristics are misrepresented by the Subcontractor, supplier, distributor, or manufacturer. Types of known suspect or counterfeit items include, but are not limited to: fasteners, circuit breakers, valves, piping components, electrical devices, plate, bar, shapes, and channel members. Such items may be falsely labeled as a different class of part, or be used or refurbished parts that are falsely represented as new parts.

CLAUSE 6 – FORCED, CONVICT, AND INDENTURED LABOR

(a) By signing or accepting this subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

(b) Any Subcontractor subcontracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:

(1) The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.

(2) The Subcontractor may be removed from consideration for University subcontracts for a period not to exceed 360 days.

CLAUSE 7 – PACKAGING INSTRUCTIONS

The Subcontractor shall suitably package Items for shipment to prevent damage during handling and shipping. Any damage resulting from improper packaging, containerizing, or lack thereof shall be the liability of the Subcontractor, anything to the contrary notwithstanding. The Subcontractor shall indicate the University Subcontract number on each container or package. An itemized packing list shall be affixed to the outermost cover of each container or package.

The University encourages the use of biodegradable packaging materials. To assist in this endeavor, the Subcontractor is requested to use every reasonable effort to use biodegradable packaging materials for shipments to the University.

CLAUSE 8 – TITLE AND RISK OF LOSS

Unless otherwise provided in the Subcontract, title to items purchased under the Subcontract shall pass directly to the Government, and the risk of loss or damage to the items shall remain with the Subcontractor and shall pass to the University, upon completion of delivery and unloading at the delivery point.

However, if the Subcontract requires formal acceptance of any items by the University, then title to such items shall pass directly to the Government upon such formal acceptance; and the title and risk of loss or damage to non-conforming items shall remain with the Subcontractor until acceptance of the items by the University as conforming.

CLAUSE 9 – SHIPMENTS FOR UNIVERSITY'S ACCOUNT

Except as otherwise provided in the Subcontract, all shipments by the Subcontractor for the University's account shall be (1) shipped FOB Destination or Origin and marked as shipped "For the U. S. Department of Energy;" (2) shipped at the maximum declared value for the lowest applicable transportation rate or classification, and the bill of lading shall so note; and (3) self-insured by the University and not insured by the Subcontractor. Airway bills shall be marked with the appropriate "Government Package" entry. Shipping costs in excess of those per the "Shipping Instructions" specified on the face of this Subcontract shall be deducted from the Subcontractor's invoice(s).

CLAUSE 10 – INVOICES

The Subcontractor shall submit its invoice at the time of final shipment or completion, unless otherwise provided in the Subcontract. All invoices shall comply with the invoice requirements specified in the Subcontract. Failure to comply with any of these requirements may result in a delay in payment or non-payment of the invoices.

CLAUSE 11 – PAYMENT

Unless otherwise provided in the Subcontract, Subcontractor shall be paid within 30 days after receipt of a properly prepared and submitted invoice, for Items delivered and accepted or services preformed and accepted. Any offered discount shall be taken if payment is made within the discount period indicated by the Subcontractor. Payments may be made electronically or by check, at the option of the University, and shall

be deemed to have been made as of the date the electronic payment was made or the check was mailed.

Information on electronic payments is available at:
http://www.lbl.gov/Workplace/CFO/co/ap/electronic_payments.html.

CLAUSE 12 – WARRANTY

The Subcontractor warrants that the Items furnished under this Subcontract shall be covered by the most favorable commercial warranties the Subcontractor gives to any customer for the same or substantially similar Items. Such warranties shall include performance, workmanship, labor, materials, Subcontractor's design or engineering contributions, and the Subcontractor shall furnish copies of same to the University, upon request. Notwithstanding any other provisions of this Subcontract, the Subcontractor also warrants that the Items furnished shall be of the most suitable grade and exactly as specified in this Subcontract. The rights and remedies provided by such warranties shall be in addition to and shall not limit any rights afforded to the University by any other provision of this Subcontract.

If a defect is discovered in any Item covered in this Subcontract, the Subcontractor shall correct at its expense such defects as are reported within the Subcontractor's applicable standard warranty period for the Items. Upon expiration of the applicable warranty period, all such liability shall terminate except for fraud, or such gross mistakes as amount to fraud, latent defects, or specific failure to comply with the terms of this Subcontract.

CLAUSE 13 – LAWS, REGULATIONS, AND DOE DIRECTIVES

All delivered items and all services performed under this Subcontract shall be in compliance with all applicable federal, state, and local laws, ordinances, statutes, codes, rules, and regulations (including DOE regulations), including but not limited to those relating to wages, hours, employment, discrimination, immigration, and safety (including OSHA). The Subcontractor shall also comply with the Contractor Requirements Document (CRD) of any DOE Directive referenced within the Subcontract or these General Provisions.

Except as otherwise directed, the subcontractor shall procure all necessary permits or licenses required for the performance of work under this Subcontract.

CLAUSE 14 – NOTIFICATIONS

(a) Subcontractor shall immediately notify the University Procurement Representative in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim made against the Subcontractor, the cost of which is reimbursable hereunder.

(b) Subcontractor agrees to notify the University of any government tax, fee, or charge levied or purported to be levied on or collected from the Subcontractor in connection with this Subcontract which the Subcontractor has reason to believe may be inapplicable or invalid, and which would be reimbursable or the University has claimed an exemption hereunder. Subcontractor also agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the University, and to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest and, if so directed by the University, to cause to be assigned to the University or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the University or its designee to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.

(c) If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the University Procurement Representative in writing of such circumstances, and the Subcontractor shall take whatever action is reasonably necessary to resolve such circumstances within the shortest possible time.

CLAUSE 15 – INSPECTION

The University reserves the right to inspect all and every part of the items and services furnished under the Subcontract, during and after completion of performance. The University shall not be obligated to inspect the items or services, and neither the inspection nor the lack of inspection by the University shall relieve the Subcontractor of its responsibility for providing the items and services in accordance with the terms and conditions of the Subcontract. The inspection of or payment for an item or service under the Subcontract, either wholly or in part, shall not be construed as an acceptance.

If any item or service or any part thereof is not in accordance with the terms and conditions of the Subcontract, the University shall notify the Subcontractor that the item or service is rejected. Thereupon, the Subcontractor shall, at its own expense, take the necessary corrective action. The University shall reject, or revoke its acceptance of, an item or service: (1) within a reasonable time after a defect is discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item or service, unless the change is due to a defect in the item or service.

CLAUSE 16 – RELEASE OF INFORMATION

The Subcontractor agrees that information regarding this Subcontract, any data developed or obtained, and the name of the University, LBNL, or the Government shall not be disclosed in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information without prior written approval from the University Procurement Representative.

CLAUSE 17 – ASSIGNMENTS

This Subcontract may be assigned by the University to the U.S. Government or a successor-in-interest for management and operation of LBNL.

Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

CLAUSE 18 – BANKRUPTCY

If the Subcontractor enters into any proceeding related to bankruptcy, it shall give written notice to the University Procurement Representative via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the LBNL purchase orders, subcontracts, or agreements affected.

CLAUSE 19 – EXCUSABLE DELAYS

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics quarantine, restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the University in writing as soon as reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give the University written notice of the cessation of such occurrence.

CLAUSE 20 – DISPUTES

Except as otherwise provided in the Subcontract, any claim under the Subcontract not resolved in the ordinary course of business shall be referred in writing to the University Procurement Representative and the executive management representative of the Subcontractor with the authority to settle the dispute. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be treated as compromise and settlement negotiations, for the purposes of

application of rules of evidence. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of the Subcontract, in accordance with its terms and conditions.

Any unresolved dispute with a value under \$100,000 relating to the Subcontract (whether contract, tort, or both), or the breach of the Subcontract shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

The following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA; (2) the location for all arbitrations shall be in Alameda County or other location agreed to by the parties; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these General Provisions entitled *GOVERNING LAW AND VENUE*.

CLAUSE 21 – GOVERNING LAW AND VENUE

The Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Subcontract shall be instituted in the State of California in the Superior Court of Alameda County.

CLAUSE 22 – WORK ON UNIVERSITY OR GOVERNMENT PREMISES

(Applicable to Subcontracts involving work on University or Government premises or for transportation.)

(a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each, and that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

(b) **Indemnify, Defend and Hold Harmless.**

(1) The Subcontractor shall indemnify, defend and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborers', material provider's, and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government; and

(2) Promptly notify the University, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, suits, or liens and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means. The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof, as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed; but the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by

lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

(c) **Clean Up.** The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its work or the work of any of its lower-tier subcontractors; and shall remove all such waste material and rubbish at the completion of the work and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. If the waste material and rubbish is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

(d) **Employees.**

(1) The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall remove such person from the work under the subcontract, and that person shall not again, without written permission of the University, be assigned to work under the subcontract.

(2) It is understood that if employees of the University shall perform any acts for the purpose of discharging the responsibility undertaken by the Subcontractor hereunder, whether requested to perform such acts by the Subcontractor or not, such employees of the University while performing such acts shall be considered the agents and servants of the Subcontractor subject to the exclusive control of the Subcontractor.

(e) **Environment, Safety, and Health.**

(1) The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the health and safety of employees and members of the public, to minimize danger from all hazards to life and property, and to prevent injury to any of its employees or other persons; and shall comply with all applicable environmental, safety, health, and fire protection regulations and requirements, including those of the University and DOE (including reporting requirements).

(2) The Subcontractor shall immediately take action to correct any noncompliance with the requirements of this clause. In the event that the Subcontractor fails to comply with said regulations or requirements of the University or the DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

CLAUSE 23 – WORKER SAFETY AND HEALTH

(Applicable if the Subcontract involves performance at an LBNL site.)

The Subcontractor and its lower-tier subcontractors performing work at an LBNL worksite are subject to the DOE *Worker Safety and Health Program* regulation of Title 10, Part 851 of the U.S. Code of Federal Regulations (10 CFR 851), and shall perform the work in compliance with the *LBNL Health and Safety Manual*, available at <http://www.lbl.gov/ehs/pub3000/>, which implements the requirements of 10 CFR 851, and in compliance with their Cal/OSHA mandated Injury and Illness Prevention Plan (IIPP) or equivalent and all other LBNL safety procedures and policies communicated to the Subcontractor. The Subcontractor is responsible for ensuring that its lower tier subcontractors comply with these requirements. Violations of these requirements may subject the Subcontractor and its lower tier subcontractors to civil penalties.

The Subcontractor shall ensure that all workers requiring unescorted/badged access to an LBNL site complete the on-line *General Employee Radiation Training* (GERT). A GERT booklet and the on-line training are available at <http://www.lbl.gov/ehs/training/>. The GERT booklet is also available at the Site Access Office in Building 65B.

CLAUSE 24 – INJURY REPORTING

(Applicable if the Subcontract involves performance by ten or more Subcontractor employees at LBNL sites.)

(a) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death (including any death occurring 30 days following a work-related incident) or in-patient hospitalization and all amputations and all losses of an eye shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(b) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

CLAUSE 25 – WALSH-HEALEY PUBLIC CONTRACTS ACT

If this subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

CLAUSE 26 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract document (including any signature page and schedule of articles), these General Provisions, and any other referenced or incorporated clauses, provisions, and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these General Provisions, including the FAR and DEAR clauses listed in the clause entitled *Clauses Incorporated by Reference*; (c) any specifications; (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, and documents.

CLAUSE 27 – CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9 of CFR Title 48 and available at <http://www.gpo.gov/fdsys/>, are hereby incorporated by reference as a part of these General Provisions, as prescribed below. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

As used in the clauses, the term "contract" shall mean this Subcontract; the term "Contractor" shall mean the Subcontractor; the lower-case term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR 52.227-1, 52.227-2, 52.227-3, 52.227-14, and 52.227-19, and DEAR 952.227-11, 952.227-13, 970.5227-4, and 970.5232-3, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University. As used in FAR 52.245-1, the terms "Government" and "Contracting Officer" shall mean the University, except with respect to title. As used in DEAR 952.227-9 and 970.5232-3, the term "DOE" shall mean DOE and the University.

THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:

- | | |
|-----------------|---|
| DEAR 952.203-70 | WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000). Applies if the work is performed on-site at a DOE-owned or leased facility. |
| DEAR 952.204-71 | SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011). Applies if any nuclear technology |

	information will be made available to foreign nationals of sensitive foreign nations.				
DEAR 952.204-77	COMPUTER SECURITY (AUG 2006). Applies if the Subcontractor has access to any LBNL or DOE computers.				2. Evaluation by non-government evaluators;
DEAR 970.5208-1	PRINTING (DEC 2000). Applies if printing is specified under the Subcontract.				3. Use (except for manufacture) by other contractors or subcontractors participating in the Government's program of which the specific subcontract is a part;
FAR 52.211-17	DELIVERY OF EXCESS QUANTITIES (SEP 1989). Applies if the Subcontract is for supplies.				4. Emergency repair or overhaul work; and
FAR 52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997). Applies when it is contemplated that certified cost or pricing data will be required or for which any pre-award or post-award cost determination will be subject to Subpart 31.2.				5. Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation or for emergency repair or overhaul work.
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014). Applies if the Subcontract involves any further subcontracting opportunities.	FAR 52.227-19	COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007). Applies if the Subcontract involves the acquisition of commercial computer software.		If delivery of Restricted Computer Software is required, then ALTERNATE III shall apply.
FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014). Applies if the Subcontract involves mechanics or laborers and is for other than "commercial items."	DEAR 952.227-82	RIGHTS TO PROPOSAL DATA (APR 1994). Applies if the Subcontract is based upon a technical proposal.		
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015)	DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010), Paragraphs (a) through (h), excluding Paragraph (d). Applies if costs incurred are a factor in determining any payable amount. The records shall be retained for 3 years after final payment.		
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2015) Note: Download the required EEO Poster at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm	FAR 52.232-11	EXTRAS (APR 1984)		
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (MAR 2015)	FAR 52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)		
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), with ALTERNATE I (JUL 1995). Applies if the Subcontract involves the delivery or on-site use of any hazardous materials.	FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)		
FAR 52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015). Applies if FAR 52.222-41 is applicable.	FAR 52.242-15	STOP-WORK ORDER (AUG 1989)		
FAR 52.223-11	OZONE-DEPLETING SUBSTANCES (MAY 2001). Applies if the Subcontract involves the delivery or use of ozone-depleting substances or supplies that may contain or be manufactured with ozone depleting substances	FAR 52.243-1	CHANGES – FIXED PRICE (AUG 1987), with Applicable ALTERNATE.		
FAR 52.223-12	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995). Applies if the Subcontract is for services involving the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances, as a refrigerant, such as air conditioners (including motor vehicles), refrigerators, chillers, or freezers.	FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)		
DEAR 970.5225-1	COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)	FAR 52.245-1	GOVERNMENT PROPERTY (APR 2012), with ALTERNATE I		
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)	FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003). Applies if the Subcontract involves international air transportation.		
DEAR 952.227-9	REFUND OF ROYALTIES (MAR 1995). Applies if "royalties" are paid under the Subcontract by the Subcontractor, or by a subcontractor at any tier.	FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006). Applies if the Subcontract involves ocean transportation of supplies other than "commercial items", except as described in paragraph (e)(4) of the clause.		
FAR 52.227-14	RIGHTS IN DATA-GENERAL (MAY 2014), with ALTERNATE V and DEAR 927.409(d)(3), and substituting paragraph (a) with DEAR 927.409(a). Applies if any "data" will be produced, furnished, or acquired under the Subcontract. If delivery of Limited Rights Data is required, then ALTERNATE II shall apply, with the following disclosure purposes added to the end of paragraph (a) of the Limited Rights Notice: 1. Use (except for manufacture) by support services contractors or subcontractors;	DEAR 952.247-70	FOREIGN TRAVEL (JUN 2010)		
		FAR 52.249-4	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)		
			THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$2,500:		
		FAR 52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 2014). Applies if the Subcontract is principally for the furnishing of services through the use of "service employees", unless the Subcontract qualifies for an exemption.		
			THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$3,500:		
		FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015). Applies if the Subcontract is for construction or services in the U.S., except for commercial services that are part of the purchase of a 'commercially available off-the-		

- shelf' (COTS) item, or a COTS item with minor modifications, normally provided for that COTS item and performed by the COTS provider.
- FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)
- FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (MAY 2014)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$10,000:

- FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$15,000:

- FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

- DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010). Applies if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2.

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$35,000 OR MORE:

- FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$100,000 OR MORE:

- FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)
- DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS LESS THAN \$150,000:

- FAR 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM) (APR 1984)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$150,000:

- FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
- FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014), excluding paragraph (c)(1)
- FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)
- FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)
- FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)
- DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009), with ALTERNATE I. Applies if the Subcontract involves advisory and assistance services, as defined in FAR 2.101. The period of ineligibility shall be five years.
- FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 2010), excluding paragraph (b)

- FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
- FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)
- FAR 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT-PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 2014). Applies if FAR clause 52.222-41 is applicable and the Subcontract is for multiple years or has an option to renew.
- FAR 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT (MAY 2014). Applies if FAR clause 52.222-41 is applicable and FAR clause 52.222-43 does not apply.
- FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
- FAR 52.227-3 PATENT INDEMNITY (APR 1984). Applies if commercial supplies are furnished under the Subcontract.
- FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)
- FAR 52.246-2 INSPECTION OF SUPPLIES-FIXED-PRICE (AUG 1996)
- FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (MAY 2004)
- FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$500,000:

- FAR 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)
- DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$700,000:

- FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015). Applies unless the Subcontractor is a small business or there are no subcontracting possibilities.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$750,000:

- FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011). Applies if certified cost or pricing data is required.
- FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS (AUG 2011). Applies if certified cost or pricing data is required.
- FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010). Applies if certified cost or pricing data is required.
- FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 2010)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$5,500,000:

- FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015). Applies if the Subcontract has a performance period of more than 120 days. All disclosures of violation of the False Claims Act or of Federal criminal law shall be directed to the DOE Inspector General, with a copy to the LBNL DOE Contracting Officer.

FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007). Download the required poster at: <http://energy.gov/ig/downloads/office-inspector-general-hotline-poster>

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT INDICATES IT IS FOR RESEARCH, DEVELOPMENT, OR DEMONSTRATION (RD&D) WORK OR DESIGN WORK INVOLVING NON-STANDARD TYPES OF CONSTRUCTION:

DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) Paragraph (a), in place of FAR 52.227-1.

DEAR 952.227-11 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 1995). Applies if the Subcontractor is a Domestic Small Business or Non-Profit Organization, as defined by FAR 27.301.

DEAR 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SEP 1997). Applies if the Subcontractor is not a Domestic Small Business or Non-Profit Organization, as defined by FAR 27.301.

FAR 52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987). Applies to all Subcontracts except those with Universities or Colleges under \$500,000.

DEAR 952.227-84 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (FEB 1998)

DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005)

FAR 52.246-7 INSPECTION OF RESEARCH AND DEVELOPMENT - FIXED PRICE (AUG 1996). Applies if Subcontract exceeds \$150,000

FAR 52.249-9 DEFAULT (FIXED PRICE RESEARCH AND DEVELOPMENT) (APR 1984). Applies if Subcontract is over \$100,000.

THE FOLLOWING DOE ORDERS (CONTRACTOR REQUIREMENTS DOCUMENTS ONLY) APPLY TO ALL SUBCONTRACTS:

DOE O 221.1A REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL (4/19/08)

DOE O 221.2A COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL (2/25/08)

DOE O 414.1D QUALITY ASSURANCE (5/8/13)

END OF GENERAL PROVISIONS

